

February 27, 2001

Joe Bouvette, Chair
Kittson County Board of Commissioners
County Courthouse
410 South 5th Street
Hallock, MN 56728-0848

RE: In the Matter of the Appeal of the Trespass Citations Nos. 22021, 22022, Unknown, Issued to Rickey Dale Spreeman, James Charles Fischer and James Robert Spreeman^[1]; OAH Docket Nos. 15-2000-14042-2, 15-2000-14043-2 and 15-2000-14044-2

Dear Chairperson Bouvette:

On February 22, 2001, a hearing was held on the trespass citations listed above. Rickey Dale Spreeman, James Robert Spreeman and James Charles Fischer all appeared in person at the Office of Administrative Hearings. With the consent of the defendants the following persons testified by telephone from Hallock, MN in support of the citation: Deputy Steve Porter; Leonel Anderson, landowner; Ryan Truedson, Mr. Anderson's nephew; and Harold Hilde, a neighboring landowner. The hearing was tape-recorded.

The issue presented is whether the defendants trespassed when they entered on land owned by Mr. Anderson. The land was not posted to prohibit hunting or other recreational use, and, because it was enrolled in the CRP program, it is not considered agricultural land.^[2]

The three defendants were together when the citations were issued. All agree that the facts and law governing their citations are the same. Thus, the three matters have been consolidated.

The facts are as follows: On November 11, 2001, four men, including the three defendants, were hunting in Kittson County. Rick Spreeman shot a deer on property belonging to Harvey Baker. The deer ran to the west and was last seen on the adjoining property, belonging to Leonel Anderson. Rick Spreeman went to a nearby home and explained to the owner, Harold Hilde, that he had shot an 8-point buck and wanted to retrieve it. Mr. Hilde told Mr. Spreeman that the property belonged to Leo Anderson, and Mr. Hilde would call to get permission from Mr. Anderson to retrieve the buck. Mr. Anderson gave his permission.

Rick Spreeman, Jim Spreeman and Jim Fischer walked onto the Anderson property which was covered with grass about waist high. Deer appeared, and Jim Fischer shot and killed a button buck, not the 8-point buck the men were seeking.

Ryan Truedson was visiting his uncle, Leonel Anderson. Mr. Anderson told his nephew that he had given permission for some hunters to retrieve an 8-point buck. Mr. Truedson went out to see what was happening, saw three men on the property, and believed by the way that the men were spaced on the field that they were hunting rather than retrieving a deer. Mr. Truedson called Deputy Porter. Both Anderson and Truedson heard three shots fired. They also saw the button buck being dragged to the road by the hunters.

Deputy Porter issued the trespass citations because Mr. Anderson told him that the defendants had exceeded the limited permission he had given them to go on his property.

All of the defendants stated that it is their practice to seek permission before entering private land, and that is supported by their request for permission to enter Mr. Anderson's property. Mr. Anderson admits that he gave limited permission and that he did not tell the men to leave his property or that they could not hunt there.

Conclusion: The county has not demonstrated by a preponderance of the evidence that the actions of the defendants constituted a trespass. Had the land been posted, or the defendants been told to leave or not hunt on the land, the result could be different. Because the land was not posted, and limited permission to enter was given, I cannot conclude that the defendants were trespassing on Mr. Anderson's land.

It's clear there was a misunderstanding. Mr. Anderson, Mr. Hilde and Mr. Truedson believe that permission was limited to retrieving an 8-point buck and that the hunter took unfair advantage of the limited permission granted. The hunters, on the other hand, did not intend to upset the landowner and feel they went beyond the requirements of the law by seeking permission to enter.

The statutes allow hunting on non-agricultural land unless the land is posted, or the owner tells the hunter to leave.^[3] Although the express permission that was given may have been limited, there was no oral notice given to the defendants that they could not hunt on Mr. Anderson's property or that their authority to enter the property had been revoked, or overstepped. Wrongful conduct following authorized entry can constitute a trespass, but it is not sufficiently clear in this case that the hunters were denied the right to hunt on the unposted non-agricultural CRP land. Without that express communication, I cannot conclude that a trespass occurred.

IT IS HEREBY RECOMMENDED that the Kittson County Board dismiss the trespass charges against the defendants.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the county board may not issue a final order until at least five days after receipt of the report of the administrative law judge. The persons to whom the order is issued may, within those five days, comment to the county board, and the county board will consider the comments. The final order of the county board may be appealed.^[4]

Sincerely,

BEVERLY JONES HEYDINGER
Administrative Law Judge

Telephone: 612/341-7606

BJH:aws

cc: Rickey Dale Spreeman
James Charles Fischer
James Robert Spreeman
Deputy Steve Porter
Pat Watts, DNR

^[1] It is noted that errors in Rickey Dale Spreeman's and James Charles Fischer's names have been corrected.

^[2] See Minn. Stat. § 97B.01, subds. 2, 4 and Ex. 1, p.10.

^[3] Minn. Stat. § 97B.001, subd. 3.

^[4] See Minn. Stat. § 14.63 to § 14.69.